IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6858 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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BABABHAI TAPUBHAI PARMAR

Versus

SURENDRANAGAR JT. MUNICIPALITY

Appearance:

1. Special Civil Application No. 6858 of 1993

MR BV LAKHIA for Petitioner No. 1

Ms. Vinayak for

MR PM THAKKAR for Respondent No. 1

Mr. Premal Joshi,learned AGP

for Respondent No. 2

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 23/08/2002

ORAL JUDGEMENT

1. This petition of 1993 is notified for final

hearing after 9 years, though rule was made returnable on 24.8.93 as per order dated 13.7.93. It is unfortunate that though the rule was made returnable as back as on 24.8.93, only now the matter was notified before the court for final hearing and accordingly this court has to consider the relief sought for by the petitioner in this petition, keeping in view the order dated 13.7.93 refusing interim relief by the court.

2. It is the case of the petitioner that petitioner was working with respondent No.1 in the Sanitation Department as a driver and it is the case of the petitioner that he was appointed as a Safai Kamdar with the respondent No.1 and he was also promoted to the post of permanent driver and he was working in Sanitation Department and the Chief Officer, Surendranagar Joint Municipality has issued notice dated 9/15-7-1992 informing the petitioner and one Mansukhbhai that as per the service book maintained by the Municipality, they reach age of superannuation by completing 58 years and 60 years respectively i.e. on 14.7.93 and 30.8.93. The said joint notice issued to the petitioner and Mansukhbhai is at Annexure 'A'. Mansukhbhai was working in the Sanitation Department and as per the said notice, the petitioner and Mansukhbhai was informed about their date of superannuation. It is the case of the petitioner that as per the rules of retirement, the Municipality can order the employee of higher cadre to retire on completion of 60 years of age and also the Municipality can continue such employees in service till they reach 60 years of age and for such extension, the employee has only to obtain physical fitness certificate that a person is physically fit to work. It is also the case of the petitioner that as per the prevailing practice in the Municipality, the employee who want extension of 2 years may apply for extension for further period of 2 years but he may be physically fit and is in a position to work. The petitioner has also given instances that one Nandlal Parikh working as Octroi Inspector with the Octroi Department and Mukundbhai Parikh working as Head Clerk and others were given extension for further period as they have applied for extension by producing Certificates that they are physically fit to perform their duties. It is the case of the petitioner that the petitioner had also addressed one application to the President of the respondent Municipality on 1.10.92 praying for extension of his service for a further period of 2 years by highlighting that he is working as a permanent driver in the Sanitation Department and as per the notice given by the Municipality, he is retiring on superannuation on 14.7.93 and accordingly while praying for extension of

further period of 2 years, he has highlighted that he is only earning member in the family and there is a liability to maintain 5 persons and extension was sought for on the ground that he can maintain his family members. In the representation he has also highlighted that from the day on which he had entered in the service of the Municipality till date he has served honestly and satisfactorily and accordingly a request was made for extension of further 2 years in the service. It is further found that on 9.12.92 the petitioner has also addressed a letter to the President of the respondent Municipality highlighting that no action was taken on application dated 1.10.92 and accordingly requested the President to take decision and he may be continued in service. As per Annexure 'D' the Gujarat Rajya Sudhrai Kamdar Sangh had also addressed a representation in the form of demand to continue the petitioner in service upto 60 years and if the reply is not received within stipulated time they will take appropriate action. It is further found from Annexure 'E" that the Secretary of the Gujarat Rajya Sudhrai Kamdar Sangh had addressed a letter to the Conciliation Officer stating that such representation for extension of service of petitioner upto 60 years is already made to the Municipality and no reply is received from the Municipality and accordingly necessary step be taken in the matter. It is further found from the letter issued by the Asst. Labour Commissioner, Surendranagar addressed to President of respondent - Municipality and the Secretary of Gujarat Rajya Sudhrai Kamdar Sangh dated 22.2.93 that the hearing was fixed in his office on 6.3.93 at 4.30 P.M. and for preliminary discussion a representative be deputed before him. Assistant Labour commissioner under his letter dated 2.7.93 informed the parties in respect of request of petitioner to continue upto 60 years as a driver and that the respondent Municipality has considered it and as per the report submitted by the Conciliation Officer under Section 12(4) of the Industrial Disputes Act, which he had also considered, he was of the view that the age of 58 years is fixed as per the provisions of Gujarat Municipalities Act/Rules and extension of such age limit is of administrative nature. The request made for reference is not entertained and request for making reference was rejected.

3. As found, even while issuing rule in this petition, interim relief prayed for by the petitioner was refused and as per notice Annexure 'A' dated 9/15-7-1992, the petitioner has already retired from service after completing 58 years of age on 14.7.93. The petitioner is of advanced age of about 67 years and on examining the

order under challenge, it is not possible for this court to hold that any error is committed by the authority. Accordingly the petition deserves to be rejected and the same is rejected. Rule is discharged. However, there will be no order as to costs.

(D.K.Trivedi,J)

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